[APPELLATE CIVIL JURISDICTION]

SAYNA VIENNA RANA YENA SOMASUNDARAM CHETTIAR OF BATU PAHAT

vs.

ONG YEO SENG ALIAS WONG YEE SENG AND OTHERS

[JOHORE APPEAL No. 5 OF 1932]

[CIVIL SUIT No. 104 OF 1931]

F.M.S. Civil Procedure Code 1918 S. 265 (i) (b) and (c)—"Agriculturist"—Liability of rubber land and adjoining cultivator's house to attachment and sale in execution.

A cultivator of rubber land is an agriculturist within the meaning of S. 265 (i) (b) and (c) of the F.M.S. Civil Procedure Code 1918.

A rubber estate of 10 acres adjoining and held along with the house of a cultivator is not within the description of "land immediately appurtenant thereto and necessary for their enjoyment" in S. 265 (i) (c). The only land exempted from attachment by this exception is land appurtenant to the building and necessary for the enjoyment of the house itself; and not so much land as may be necessary for the maintenance of the agriculturist and his family.

This matter came on in the first place before the Assistant Registrar of the Supreme Court of Johore at Batu Pahat. The Plaintiff had obtained judgment against the Defendants for $1,348.00 and for interest and costs and the first two Defendants applied to the Court for leave to pay the Judgment debt by instalments. Thereupon the plaintiff applied for leave to execute the decree against the first two Defendants by attachment and sale of certain lands. The facts and arguments are sufficiently set out in the Judgments.

M. V. Pillai for Plaintiff.

Defendants were present in person.

CALDER, Assistant Registrar.—In this case the Plaintiff obtained judgment for $1,348.00 interest and costs on 13th February, 1932, and on 27th February, at the hearing of an application by the first two Defendants to pay the decree by instalments, the latter stated that they were cultivators of rubber lands, that they had no other means of livelihood, and that they lived in a house on their land.

The further hearing of the application was postponed by consent to determine whether or not the land owned by the first two defendants was attachable under Section 265 (i) (c) of the Civil Procedure Code.

To test this, the Plaintiff applied on 2nd March 1932 to execute the decree against the first two Defendants by attachment and sale of:—

1. "All the right of occupancy and interest, if any in all that piece of land held under S.S. No. 36/28 containing an area of 10 acres 0 rood 00 pole situated in the Mukim of VII, Batu Pahat and belonging to the abovenamed Defendants Nos. 1 and 2 Wong Yee Seng and Wong Teck Watt.
2. All the right title and interest, if any, in all that piece of land comprised in Johore Government Grant No. 8562, containing an area of 6 acres 0 rood 01 pole situated in the Mukim of Tanjong Sembrong, Batu Pahat and belonging to the above named Defendant No. 1 Ong Yeo Seng."

and the first two Defendants on 5th March 1932 made an application supported by affidavit, for protection under Section 265 (i) (c) of the Civil Procedure Code.

On the 5th March 1932, in the presence of both parties, after allowing Plaintiff's Solicitor to peruse the Defendants' affidavit, the facts in which were not disputed, I refused the application for attachment and sale of the right of occupancy and interest of the first two Defendants in the land covered by Surat Sementara 36/28.

It is this order against which the plaintiff now appeals.

The affidavit of the first two Defendants made on the 5th March 1932 states:—

3. "We are agriculturists cultivating rubber on the aforementioned lands and have no other means of livelihood. We both live in a house belonging to us on the land comprised in S.S. 36/28.
4. The sum due on the said decree was for money lent and was not for rent in respect of the house or

lands aforementioned. We therefore pray for protection under Section 265 (i) (c) of the Civil Procedure Code."

Section 265 (i) (c) of the Civil Procedure Code provides that the following particulars shall not be liable to attachment or sale in execution of decree.

> "Houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

Section 265 (ii) goes on to state:—

> "Nothing in this Section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land."

In view of the affidavit of the judgment debtors, I hold that neither the house in which they live nor the land immediately appurtenant thereto and necessary for its enjoyment is liable to attachment or sale in execution of this decree. As this land is an integral part of the land held under S.S. 36/28, it seems to me to follow that the application for the attachment thereof must be refused..

From this decision the plaintiff appealed to the Judge. The appeal came on for hearing before Burton J.

Knowles for Plaintiff.

Defendants in person.

The arguments sufficiently appear from the Judgment.

BURTON, J.—This is an appeal from the decision of the Assistant Registrar at Batu Pahat who refused to allow the attachment of the rights of occupancy and interest of the first and second Defendants in a piece of land under Surat Sementara No. 36/28.

The judgment creditors applied in the first place for the attachment of two pieces of land, one Surat Sementara No. 36/28 consisting of 10 acres and belonging to the first and second Defendants and the other Grant No. 8562 consisting of 6 acres and belonging to the first Defendant and situated about a quarter of a mile away. The Assistant Registrar allowed the attachment of Grant 8562, there is no clear evidence whether this piece of land was cultivated or not, it would appear that it is cultivated with rubber; but it was never suggested that the possession of this land had any effect on the question in issue. It is anyhow not appurtenant to the house. On the land held under Surat Sementara are a dwelling-house, a motor-shed, three hen-houses, a pig sty, and a rubber mangle shed.

The judgment creditor now contests the decision that the defendants are entitled to exemption under Section 265 (i) (c) in respect of the Surat Sementara. The judgment debtors swore a joint affidavit in which it was stated:—

> "We are agriculturists cultivating rubber on the aforementioned lands and have not other means of livelihood. We both live in a house belonging to us on the land comprised in Surat Sementara No. 36/28. The sum due on the said decree was for money lent, and was not for rent in respect of the house or lands aforementioned."

The Assistant Registrar refused the application on the ground that the land was not liable to attachment under Section 265 (i) (c) of the Civil Procedure Code which exempts from attachment.

> "Houses and other buildings (with the materials and the sites thereof and land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

The attaching creditor did not answer the affidavit and the Assistant Registrar found on the evidence that the judgment debtors are agriculturists. I am not prepared to say he is wrong; their contention gains weight from their statement in this Court—and the statement was unchallenged that they worked on the land and did not employ any hired labour.

The words of clause (c) if pressed to the fullest extent of their literal meaning are no doubt comprehensive. But I think that in their application they must be limited to the peasant farmer class who live on the fruits of the occupied land by their own personal exertions and generally without hired labour, the class of common agriculturists who till the field and whose main source of livelihood is the personal cultivation of their own small holding (see *Ashmatullah* v. *Pan Mahmud* 20 C.W.N. 874 and *Rubine* v. *Balawantrai* A.I R. 1923 B. 12) in other words I think that this exception from the general right of the attaching creditor to execution, must be construed strictly against the beneficiaries of the exemption. This limited interpretation is confirmed by a close examination of the words of the Section. The word "agriculturist" also occurs in paragraph (b) where the tools of artisans are spoken of in juxtaposition with the implements of husbandry of an agriculturist. The word "artisan" is of definite and precise meaning, and the intention of this paragraph is clearly to protect from attachment the tools which an artisan uses in pursuit of his trade. So on the principle of the maxim *noscitur a sociis* it seems clear that the word "agriculturist" must be confined to working agriculturist, and the implements of husbandry to the implements which he himself uses in the course of agriculture.

There is full authority for this principle of interpretation. In the *Warden* v. *Dean of St. Paul's* (1817) 4 Price 65 an Act which exempted "magnates and noblemen" from tithes was held not to extend to an ecclesiastical magnate, such as a dean, but to apply magnates of a "noble" kind, and in *Cotton* v. *James* 8 L.J.K.B. 345 the word "delivery" was held to be restricted by the context so as to exclude delivery to a bailee. In both these cases and in many others a general word has been held to be restricted in meaning by its association with one of narrower connotation and on the same principle here I think that agriculturist must be limited because of its association with artisan. The word "agriculturist" cannot in paragraph (c) bear a different meaning.

Nor am I prepared to assent to the proposition that the cultivation of rubber is not agriculture. I think that clearly it is, in the ordinary meaning of the word, and it was not suggested that the word "agriculture" bears in law any specialised meaning.

The position then is that the two judgment debtors are agriculturists who live in a house on a piece of land ten acres in area; and it follows that the house and other buildings and "the land immediately appurtenant thereto" are exempt from attachment.

As far as I have been able to discover, authorities are not helpful as to the meaning of "appurtenant." The natural meaning of the words is to exempt the land belonging to the house; and as we are concerned only with peasant proprietors, I think it is reasonable to infer that the words imply such area of land belonging to the house as is necessary for the maintenance of the peasant proprietor's family by the personal exertions of the members of that family and sufficient to give him and his family a living according to the scale of the peasant proprietor class.

Now in this case the holding is of 10 acres, divided among two joint proprietors; and on the evidence in the case viewed in the light of the principles I have laid down I think this land may be said to be immediately appurtenant to the house. The question whether a judgment creditor is entitled to the benefit of this clause must of course be considered as a question of fact in each case. I am not sure that there is any force in the argument that a general application of this section will involve the survey of innumerable subdivisions, cutting off in each case that part of the holding which is immediately appurtenant to the house in order that the rest of the land may be sold in execution, (it is possible that it may in exceptional cases) because if I am right in concluding that this exemption is only to be applied to the peasant farmer class, then if the holding upon which the house stands is too large to be classed as the holding of a peasant proprietor, the question of subdivision will not arise because the right of exemption has never arisen. And the question of what is such a holding must be decided in the circumstances of the particular case and upon the application of the judgment debtor. I do not think it is the duty of the Court to act on its own motion. The dividing line between what is a small holding and what is not, is as difficult to draw as many other such line; and it is not the part of the present judgment to

attempt to define precisely what a peasant proprietor is. In this case, it must be remembered I am dealing with a time when the price of rubber is extremely low; the price of the commodity must of course always be a factor in the decision of this question of exemption, and if ever the price of rubber reaches again the heights it has attained in the past, it may be that the extent of the rights will fall to be considered in the light of altered circumstances.

I think the order of the Assistant Registrar was right and I dismiss the appeal.

From this Judgment the Judgment creditors appealed to the Johore Court of Appeal.

The Appeal came on for hearing before Murison C. J. of the S.S. and Whitley J.

Knowles and *Laycock* for the Appellants (the Judgment Creditors).

The Respondents (the Judgment Debtors) were present in person.

The arguments are sufficiently set out in the Judgments of the Court of Appeal.

Cur. Ad. Vult.

MURISON, C. J.—The Plaintiff in this action obtained judgment for $1,348 and interest on the 13th February, 1932 against the Defendants at Batu Pahat.

The Plaintiff's attorney applied on the 2nd March, 1932 to the Assistant Registrar at Batu Pahat for the attachment of two pieces of land, one of which (the only one with which we are concerned) consisted of 10 acres of land, with a house on it, jointly in the possession of the 1st and 2nd Defendants..

The land was held under a Sementara Surat No. 36/28.

The Defendants claimed exemption from attachment under Section 265 (1) (c) of the Civil Procedure Code, which provides that the following property shall not be liable to attachment:—

> (c) "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

The Assistant Registrar held that the Defendants were agriculturists and that neither the house nor the land was subject to attachment, the land being in his opinion an integral part of the land held under S.S. 36/28.

The Plaintiffs appealed to the Judge of the Supreme Court. He held that the Defendants were agriculturists and that the land was immediately appurtenant to the house. He, therefore, dismissed the appeal.

The Plaintiffs now appeal to this Court.

There are two questions. First, were the Defendants agriculturists? and secondly, is the land immediately appurtenant to the house?

This case is said to be a test case of far-reaching effect in Johore and possibly in the F.M.S.

The facts are not disputed.

The Defendants jointly live in the house and live on the produce of their ten acres of land which is planted with rubber trees. Close to the house are a motor shed, three hen-houses, a pigsty, and a rubber mangleshed.

Now in the Scots case *Gilchrist* v. *Lanarkshire* 25 Rettie, 589 (the full report of which is not available) Lord Stormouth-Darling said: "There are "three main methods of utilizing the soil, i.e., "Agriculture, Horticulture and Forestry. These three "things are entirely distinguishable, and any one of "them is not to be held as including any other without "special provision to that effect."

Mr. Knowles argues that Forestry is concerned with trees: that rubber-trees are trees and are, therefore, forestry and not agriculture. But I cannot imagine that a rubber-plantation, however large, could ever be called a forest, any more than a collection of apple trees, or pear trees, or mangoesteen trees, even a million of them, could ever be called a forest. If this is correct, this land is not concerned with Forestry It is clearly not Horticulture, for that concerns garden. It would, therefore, seem to be concerned with Agriculture.

It is to be observed that in the Agricultural Pests Enactment of Johore (No. 1 of 1928) certain matters which concern plants—which (section 2) include trees—are under the control of the principal Agricultural officer. He has power (section 6) to direct occupiers to treat diseased plants and that would include diseased rubber trees. Also in urgent cases he can (section 12) order the destruction of such plants.

The connection of trees with agriculture would, therefore, seem to be not incongruous.

I find no assistance in the definitions given by Chambers, and nor Webster in the Latin words from which our English words are derived—*agriculture*.

The real difficulty arises through the forced application of an English word to subject-matter (rubber-trees) which does not exist in England.

I think the safest guide of all is whether any ordinary man in this country would consider a person engaged in the cultivation of rubber trees to be a person engaged in agriculture. In my opinion he would. He would never say he was engaged in Forestry or in Horticulture.

On this broad ground I agree with the trial judge that the Defendants are agriculturalists within the meaning of section 265 of the Civil Procedure Code.

The next question is whether the whole of the land in question complies with the provisions of section 265 so as to be included in the exemption.

For this the land must be:—

(a) immediately appurtenant to the building and

(b) necessary for the Defendants' enjoyment.

And these conditions must be strictly construed (*Re Peek* etc. 1893, 2 Ch. at page 319).

The word "appurtenant" in the English law has been construed and explained from very early times. In Touchstone (Ed. of 1791) page 94 it is said:—

"By the grant of a meffuage, or a meffuage with the appurtenances, doth pafs no more than dwelling Houfe, barn, dovehoufe, and buildings adjoining, orchard, garden, and curtilage, i.e. a little garden, yard, field, or piece of void ground lying near and belonging to the meffuage, and houfes adjoining to the dwelling houfe, and the clofe upon which the dwelling houfe is build, at the moft. And fo much alfo may pafs by the grant of a houfe. So that the quantity of an acre of ground, or there abouts in orchard, garden, and out-let, may pafs by either of thefe names; but more than this will not pafs by the grant that is made in either of thee words, albeit more have been occupied with it, and albeit more be intended to be paffed by the grant."

And Coke on Littleton (Cap. 11, section 184) speaking of a seat in a church appendant to a house says that "Such a seat belongeth to the house in "respect of the inhabitancy thereof." The trial judge said that "appurtenant" meant what was sufficient for the maintenance of the peasant proprietor's family. I think that construction is too wide. It might include a large tract of country. The word only connotes in my opinion what is necessary as Coke says and as Touchstone indicates for the convenient habitation of the house: in fact, as the words of the section say, for the enjoyment of the house itself. It does not concern the proprietor's sources of income.

The word "immediately" if it is not merely a pleonasm tends to limit even the limited application of the word, "appurtenant."

The authorities in India tend to confirm this view. Under the old Civil Procedure Code of 1882 (Section 266) only the materials of the house were protected from attachment and before the house itself was exempt from attachment it had to be shown that it was occupied by the agriculturist. *Radakisan* v. *Balvan* (1883) 7 Bom. 530; *Jivan* v. *Hira* (1888) 12 Bom. 363 and *Muthu* v. *The Official Receiver* (1925) 47 Mad. 227 at page 230.

For these reasons I think that only the buildings and outhouses and the ground close to the main house—say one acre, all included—are all that can be properly called immediately appurtenant to the house. To this extent only is the land which it is sought to attach, exempted from attachment.

I would, therefore, allow the appeal and vary the judgment of the lower Court by granting the attachment prayed for on only so much of the land referred.

As both parties have partially succeeded and partly failed in this appeal I would order that each party pay his own costs here and below and before the Assistant Registrar.

WHITLEY, J.—I have had the opportunity of reading the judgment of the learned Chief Justice in which I concur and I have little to add.

Section 265 (1) (c) introduces an exception to the general right of an attaching creditor to execution and must be construed strictly against the person seeking the benefit of the exception.

It is taken from section 60 (1) (b) and (c) of the Indian Civil Procedure Code the wording of which is identical. Indian decisions establish that agriculturist under that section means and must be limited to persons of the peasant farmer class who live on the fruits of the occupied land by their own personal exertions and generally without hired labour, the class of common agriculturists who till the field and whose main source of livelihood is the personal cultivation of their own small holding. *Ashmatullah* v. *Pan Mahmud* C.W.N. 874 and *Rubine* v. *Balwantrai* A.I.R. 1923 Bombay 12). In their affidavits sworn on the 6th January and 5th March 1932 the Respondents stated that they cultivate the rubber on the land in question and live in the house on the land and have no means of livelihood other than the produce of the land. They thus clearly come within the definition of agriculturists laid down in these two cases provided that agriculture can be held to include the cultivation of rubber. On the point it is idle to expect much assistance either from English or Indian cases. Rubber is not cultivated in England and at the time that the Indian Procedure Code was drafted I do not think it was cultivated in India. I agree however that the cultivation of rubber would appear to fall more under the heading of agriculture than that of forestry or horticulture.

If we examine other Enactments it is quite clear that the Legislature regards the cultivation of rubber as agriculture.

Rule 4 made under the Agricultural Pests Enactment 1928 published as Notification No. 466 in the Government Gazette of 26th September 1928 forbids the importation without the permission of the Principal Agricultural Officer of certain plants *inter alia* "Plants of Para Rubber, Cotton, Coconut and Coffee."

Rule 3 published as Notification No. 467 in the same Gazette provides for notice being given to the Agricultural Officer of certain Pests of Rubber and Coconuts.

Another rule under the same Enactment published as Notification No. 265 in Government Gazette of 29th April 1931 deals with tea.

It would thus appear that in Johore Agriculture is understood to include the cultivation of any productive bush plant or tree and it follows in my opinion that agriculturist in section 265 should include not only the tiller of the soil but also any small holder who earns his livelihood from the produce of his small holding whether that produce be padi, bananas, pineapples, coconuts or rubber.

To introduce in cases of this description such artificial distinctions between these different products as are suggested by the appellants would I think defeat the intention of the section. I think the learned trial Judge was right in holding that the respondents are agriculturists and as such entitled to the benefit of the section.

In my opinion however he went too far when he held that the words "land immediately appurtenant thereto and necessary for their enjoyment" should include the whole ten acres because the words "imply such area of land belonging to the house as is necessary for the maintenance of the peasant proprietor's family by the personal exertions of the members of that family and sufficient to give him and his family a living according to the scale of the peasant proprietor class." The only case which I have been able to discover which might appear to give such a wide meaning to the word appurtenant is that of *Leach* v. *Leach* 1878 W.N. 79. In that case the testator gave his wife for life "my freehold messuage or mansion-house with the offices, garden, lawn, and appurtenances thereto now in my own occupation." The widow claimed three meadows which were overlooked by the house, and which were in the testator's occupation at his death. It was held that "appurtenances" was of itself sufficient to pass the meadows without which the house would be no better than a suburban villa. In that case the "mansion house" would not have been a "mansion house" without the meadows. They were necessary for the convenient habitation of the mansion house as a mansion house. In the present case the ten acres of rubber are not necessary for the convenient habitation of the "house and other buildings" exempted by the section. All the other authorities referred to by the learned Chief Justice are against the Respondents' contention and I concur in the Order proposed by him.

Appeal allowed in part.

Solicitors for the Appellant—

Braddell Brothers.

The Respondents appeared in person.

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NOTES.

F. M. S. Criminal Procedure Code (Amendment)

We have with reluctance reverted to this subject which we in our last issue analysed with every care. The matter of the possible introduction into the Colony of the New Legislation is now under consideration of the Bar Committees of the Straits Settlements. So far as the public is concerned, we notice that very little interest is shown in a question which has far-reaching consequences to them. However that may be, we hope that our dissection of the abuses to which the new procedure in the Federated Malay States is liable will serve to arouse a strong opposition to its being applied in the Straits Settlements. Incidentally we are anxious to know whether the amendments will or will not applying in the State of Johore, where the law relating to Criminal Procedure is based on that of the Federated Malay States.

* * * * * *

Court of Criminal Appeal.

Thanks are due to the Honourable Mr. A. P. Robinson for having re-opened the question of the establishment of a final Criminal Appellate tribunal in this Colony. In a previous issue we strongly emphasised the necessity for urgent action but very little interest appears to have been awakened in a matter which concerns the public at large. It will be readily appreciated that an institution like the Court of Criminal Appeal will deliver thousands of accused persons from unjust verdicts and miscarriages of justice. The British Government has never failed to provide every machinery whereby the ends of justice can be attained, without consideration of cost.

A recently published report of the Retrenchment Committee states "The establishment of the new Court of Criminal Appeal will entail great expense and we consider that the creation of this Court should be deferred until the financial outlook improves." There is no doubt that the financial outlook at present appears grave but the annual budget can be so adjusted by excising superfluous items of expenditure that the cost of carrying the Ordinance into effect will not impose any burden on the revenue of the Colony.

The judicial personnel, as it at present stands, is considerably under-staffed and the appointment of an additional Judge is essential not only for the purposes of the Supreme Court but also for those of the new Court. In the Federated Malay States short-hand writers are attached to every High Court and it is desirable that a similar system should be adopted in this Colony to ensure strict accuracy in the recording of evidence.

It may be noticed that before an appeal can be lodged leave of the Court will have to be obtained. The result would be that many groundless and frivolous appeals will be eliminated and the work of the new Court confined to the hearing of limited number of appeals. Especially in capital offences where a most thorough investigation of the truth should be made, the Court of Criminal Appeal becomes a vital necessity.

Collision and Negligence.

In the recent case of *Winnipeg Electric Co.* v. *Jacob Geel* (Privy Council Appeal No. 13 of 1932) it was decided that the onus of disproving negligence in a collision case lies upon the defendant till the end of the case.

In this action the respondent was awarded by a Jury $11,158.25 as damages for personal injuries suffered by him as a result of the negligence of the appellants the owners of the motor omnibus which had caused the injuries. The Judgment of the Court of first instance was upheld, firstly, by the majority of the Court of Appeal for Manitoba and, secondly, by the Supreme Court of Canada.

On appeal to the Privy Council the appellants raised questions on the construction on certain sections of the Motor Vehicles Act (Manitoba), namely, sections 62 and 15, which read respectively as follows:—

> "S. 62. When any loss, damage or injury is caused to any person by a motor vehicle the onus of proof that such loss, damage or injury did not arise through the negligence or improper conduct of the owner or driver of the motor vehicle, and that the same had not been operated at a rate of speed greater than was reasonable and proper, having regard to the traffic and use of the highway or place where the accident happened or so as to endanger or be likely to endanger the life or limb of any person or the safety of any property shall be upon the owner or driver of the motor vehicle."
>
> "S. 15. Every motor vehicle shall be equipped with adequate brakes sufficient to control such motor vehicle at all times and with a wind shield wiper and also with suitable bell, gong horn, or other device which shall be sounded whenever it shall be reasonably necessary to notify pedestrians or others of the approach of any such vehicle."

Their Lordships of the Privy Council held that apart from S. 62 a plaintiff claiming damages for personal injury in a running down case would have to prove that he was injured, that his injury was due to the defendant's fault and the fact and extent of his loss and damage; hence unless he succeeds in establishing all these matters he must fail. In virtue however of the statute he need only establish the first and the third elements, i.e., that he was injured by the defendant and the extent of his damages, as to the second, the onus is removed from his shoulders and if he establishes the two matters in respect of which the onus still remains on him, he may close his case because it is then for the defendant to establish to the reasonable satisfaction of the jury, that the loss, damage or injury did not arise through the negligence or improper conduct of himself or his servants. This the defendant may do in various ways, as for instance by satisfactory proof of a latent defect, or by proof that the plaintiff was the author of his own injury: or by proof that the circumstances were such that neither party was to blame because neither party could avoid the other. But the onus which the section places on the defendant is not in law a shifting or transitory onus: it cannot be displaced merely by the defendant giving some evidence that he was not negligent, if that evidence however credible is not sufficient reasonably to satisfy the jury that he was not negligent; the burden remains on the defendant until the very end of the case when the question must be determined whether or not the defendant has sufficiently shown that he did not in fact cause the accident by his negligence. If on the whole of the evidence the defendant establishes this to the satisfaction of the jury, he will be entitled to judgment; if however the issue is left in doubt or the evidence is balanced and even, the defendant will be held liable in virtue of the statutory onus, whereas in that event but for the statute the plaintiff would fail, because but for the statute the onus would be on him. *A fortiori* the defendant will be held liable, if the evidence actually establishes his negligence.

LEGAL PERSONALIA AND NEWS.

According to a cable received in Malaya from London Sir Lancelot Elphinstone, Chief Justice of the Federated Malay States, has relinquished his appointment by resigning from the service. Sir Lancelot was an extremely popular and sound Judge and his rather sudden decision to retire will be regretted by members of the legal profession and the public by whom he was held in high esteem. Sir Lancelot left Malaya with Lady Elphinstone this year on leave. The Honourable Mr. Justice W. H. Thorne is acting Chief Justice.

* * * * *

Mr. Roland Braddell who is holidaying in California gave an interesting talk on "Singapore" to the members of the Rotary Club of Pasadena. Mr. Braddell's address has been reported as having been very illuminating to the Americans and, knowing Mr. Braddell as we do, we are not in the least surprised.

Mr. Boon Hoe Chia, Barrister-at-Law (of Middle Temple) who returned to Singapore from England some months ago was on the motion of Mr. R. L. Eber admitted to practise as an advocate and solicitor of the Supreme Courts of the Straits Settlements on October 10, 1932, Mr. Chia is attached to the firm of Messrs. Mendis and Ahlip, Singapore.

* * * * *

Mr. Choon Kwee Lee Barrister-at-Law of the firm of Messrs. Braddell Brothers was on the motion of Mr. John Laycock admitted on the 17th October last to practise as an Advocate and Solicitor of the Supreme Courts of the Straits Settlements.

* * * * *

Mr. B. F. Bridge, M.C.S., Barrister-at-Law, was on the 17th October admitted to practice as an Advocate & Solicitor of the Supreme Courts of the Straits Settlements.

* * * * *

Mr. E. W. Gibson who was Honorary Secretary of the Penang Bar Committee has left the Colony for England on long leave. Mr. P. J. D. Regester has been appointed Honorary Secretary of the Penang Bar Committee for the period April 1932 to April 1933.

* * * * *

Mr. C. H. Smith, partner in the firm of Messrs. Donaldson and Burkinshaw, left for home on leave on October 10th.

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Mr. H. R. Bull, M.C.S., returned from leave in September and has resumed his duties as Civil District Judge, Singapore. Mr. B. F. Bridge, who was acting Civil District Judge is now assistant to the Attorney-General.

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Mr. J. F. F. Gregg, M.C.S., the Singapore Third Police Magistrate, returned from home leave last month and has resumed his duties. Mr. A. C. Boyd, M.C.S., who was acting for him, is now the Singapore Fourth Police Magistrate.

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Mr. E. C. G. Barrett, M.C.S., who was until recently Singapore Fourth Police Magistrate, is now Assistant Civil District Judge, Singapore.

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Messrs. N. K. Bain, J. E. Kempe and G. S. Hellings have been appointed Magistrates of the First Class in and for the State of Perak. Mr. Hellings is the First Magistrate, Ipoh.

Mr. D. L. Alcantara has been appointed an Assistant District Judge Malacca.

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The Singapore Bar has lost one of its members in the person of Mr. H. P. Clarke, who was until recently attached to the firm of Messrs. Braddell Brothers. Mr. Clarke is now Secretary to the Municipal Commissioners of Malacca and we wish him success in his new sphere of activities.

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The following appears in the recommendations made in the voluminous report of the Straits Settlements Retrenchment Committee which has just been published:—"The preparation of law reports, which is at present performed at a cost of £600 per annum by an ex-member of the S. S. Bar resident in England, might be undertaken by a Government officer in the Attorney-General's department or by some other Government officer and considerable saving effected."

REVIEW.

Notable British Trials: Trial of John Watson Laurie (The Arran Murder). Edited by William Roughead, 1932. Illustrated. Published by Butterworth & Co. (Publishers) Limited, London. Obtainable from Butterworth & Co. (India) Ltd., Calcutta. Price Rs. 6/8 per copy.

The latest addition to that famous and intriguing series of Notable British Trials is the Trial of John Watson Laurie or the Arran Murder. The crime is aptly characterised as one of the most terrible and most remarkable dramas of crime and retribution in the judicial annals of Scotland and readers with nerve will get a rare thrill from its gruesome details before which fiction pales into insignificance.

Apart from being presented in a very readable style the author has spared no details in his work which is illustrated with actual photographs. The publication is as complete a record as one could wish of a crime. The Arran murder is notable for its fiendishness and a feature of the trial of the murderer is that his conviction was brought about by purely circumstantial evidence except in one or two very minor details.

In his charge to the jury the Lord Justice-Clerk said: "Circumstantial evidence is evidence which, if it be clear and conclusive, is about the best evidence in the world, because if a case is soundly based on circumstantial evidence, we are removed altogether from considerations of human

frailty—which leads men to tell untruths, one against another—and there will be no ground whatever for doubt." The lengthy evidence of medical witnesses, which as usual is to a great extent theoretical, is another interesting feature of the trial.

John Watson Laurie, the murderer, who received a reprieve from the Queen, caused the death of Edwin Robert Rose a London tourist in the Isle of Arran as far back as in 1889 in the most callous and heinous manner imaginable. After serving forty-one years in prison Laurie died a natural death at the age of 61. The trial of John Watson Laurie should find a place in the libraries of students of criminology, not to say of members of the legal profession.

GOOD OLD DAYS.

QEER DWELLING HOUSE OF THE CONSTABLE.

Some of the reporters who prepared the old English Reports before the days of sober official reporting seem to have heard some amusing cases and to have had a delightful sense of humour. They tried to frame their marginal notes and reports in such a way as to tickle the imagination of later generations.

One learned reporter quotes a case decided at York Assizes. The Constable of Bradford had hired a cellar as a "lock-up." In an indictment it was described as "the dwelling house of the Constable." If the person who framed the indictment had referred to it as "a dwelling house belonging to the Constable" such a description would have been less rude; but to assert that the cellar was "*the* dwelling house of the Constable" seems to cast serious aspersions on the position and habits of so important a person as the Constable of Bradford. By stating that the lock-up was his dwelling house, did the prosecutor man to assert that the Constable was usually to be found there and, if so, it would be interesting to know what were the charges upon which he was so frequently incarcerated. But these questions were never decided for, with proper respect for the Constable's position, the Court held that the cellar was not his dwelling house.

In another case a constable had arrested a person on suspicion and had been subsequently sued for false imprisonment. Hold C.J. makes the delightful remark "And shall his not liking a woman's looks be any cause of suspicion?"

Again at Newcastle Assizes the reporter sets out the facts of a case. "It appeared that the plaintiff had passed the evening with a friend at an inn. in company with two commercial travellers. They had spent the evening in singing songs and harmless convivial enjoyment." The plaintiff sang again on the way home and was promptly arrested. Thereafter he recovered damages for his wrongful arrest. Oh for the good old days when commercial travellers were still considered fit to be introduced to ladies' drawing rooms and singing on the way home from the public house was still considered "harmless convivial enjoyment."

Parental habits do not seem to have changed in the last hundred years for in 1837 Anderson B. had to declare the "a kick is not a justifiable mode of turning a man out of your house." Many undesirable suitors must have felt exactly the same.

The reporter also had a lively sympathy for less fortunate persons than himself. One reported case has a short head-note which might well be entitled "Advice to Burglars." It reads "It is safer to lay a burglary in a parish than in a township" though he gives no reasons for this helpful advice.

Under the headnote "fighting up and down" appears Mr. Justice Bayley's direction to the jury "fighting up and down is calculated to produce death." This direction might form a basis for a legal history of "all-in wrestling." strangeholds, and eye gauging permitted.

But perhaps the most startling headnote is that which declares "Possession in Scotland is evidence of stealing in England," a very appropriate remark for a case tried in Carlisle, but hardly flattering to the Scottish nation.

MR. JUSTICE GUY STEVENS.

"One of the Best Judges who sat on the Bench Here."

Well merited praise was showered on Mr. Justice Frederick Guy Stevens who retired recently from the Bench of the Supreme Court of the Colony after a comparatively short but brilliant career in the judiciary of the country. Mr. Justice Stevens' retirement brought about by illness follows closely that of Sir Lancelot Elphinstone, the Chief Justice of the Federated Malay States, and thereby Malaya loses two of its ablest men who graced the Bench.

There was a large assembly representing the legal profession at the Singapore Supreme Court on the 19th October last when glowing tributes were paid to Mr. Justice Stevens, who until his untimely retirement, was a Puisne Judge of the Court. In the unavoidable absence of Mr. J. V. Mills, the Attorney-General, Mr. J. H. Pedlow, the Acting Solicitor-General, in the course of an eloquent oration, said that Mr. Stevens began a career of great promise in this land of sunshine as far back as 1902.

"I have the clearest recollection of his great courtesy, his absolute fairness, his deep knowledge of the law, and the skill and ability with which he summed up the cases and presented the evidence to the Jury," Mr. Pedlow observed. "But although I knew him best as a criminal judge, it was the civil side of law that appealed to him most and it was on the civil side that he most excelled. .....We all deplore this sad and untimely illness which has led to Mr. Stevens' retirement and which has thus deprived your Lordship's Bench of one of its outstanding occupants, and has robbed Malaya of a just and fearless Judge."

"I think I am right in saying that, with the exception of Sir Thomas Braddell, he is the only practising member of the Bar in Singapore to go on the Bench to whom we have as yet to bid Godspeed and farewell." said Mr. V. D. Knowles, a senior member and worthy representative of the Singapore Bar. His activities on the Bench were not confined to Singapore but extended to Penang and the Federated Malay States. He is an example of how a practising member of the Bar may bring his knowledge to bear and work on the Bench and in a great many of his judgments one can see how his experience in Court and Chambers brought added knowledge to the Bench.

" Everybody who came in contact with Guy Stevens, as he was familiarly known here, could not help being impressed by his friendly attitude towards everyone, particularly the younger members of the Bar, and he was always willing to give assistance from his deep knowledge of the law and his wide experience of the Colony—an experience that is wider than many of us can imagine through his connection with the people of the Colony before he started to practise."

Mr. Knowles adequately commented on Mr. Justice Stevens' clarity of judgment and brilliancy of ease with which he seized upon the salient points of a case.

" Our brother Guy Stevens is well known to all of us and to me especially, for I worked with him nearly all the time he was here, as a man with almost all those points which go to make a very good judge," said the Chief Justice Sir William Murison. " He was one of the most careful and conscientious of men I have ever known and I have spent six years among men whose work was of the very essence of conscientiousness, and I know what that means. No one could be more conscientious and careful in his work than Mr. Justice Stevens.....He was a very deeply learned man."

Referring to the Civil Procedure Code which has been revised by Mr. Justice Stevens who spent eight laborious months on the work, Sir William said, " Some of you may have seen that enormous red book which is going to be the basis of a body of new law with regard to matter which at present is governed by the Civil Procedure Code. He went through it with great care and conscientiousness, and therein he has erected a monument for himself in this Colony which will last for many years.

" I regard him as one of the best judges who ever sat on the Bench here. He had the particular quality of being a judge who was taken from the Bar, a departure in appointments which is comparatively new in this Colony. I may say that I was mainly responsible myself for that departure and I have nothing to regret about it in regard to Mr. Stevens. He was a fearless judge, who did his work with knowledge, care, and a particular balance of mind. I know my colleagues will agree when I say we shall miss him very much indeed."

[Frederick Guy Stevens came to Malaya in 1902 as a member of the Straits Settlements Civil Service. In 1907 he resigned from the Civil Service to take up a legal career and was called to the Bar of the Inner Temple the following year. He then joined Messrs. Rodyk & Davidson of which legal firm he became a partner. In 1916 he heard his country's call and after a period of distinguished active service in the Great War he was demobilised in 1919 and returned to Singapore to his legal practice. In 1927 he was elevated to the Bench and after a short period in Penang and Seremban he came to Singapore in 1928 and remained here until his retirement.].

IN LIGHTER VEIN.

Roars of laughter were caused at Old Bailey, when two prisoners who were asked to select a counsel were unable to distinguish sexes in a row of barristers in wig and gown. "I will have that gentleman with the glasses" said the first pointing to Miss Venetia Stephenson, a lady Barrister. "That isn't a gentleman, but a lady and a very efficient one" was the Recorder's comment. The second prisoner pointed to Miss Helena Normanton and said, "I will have that man." "You both made a wide choice" declared the Recorder, when the laughter subsided.

" Can it be said," asked a lawyer, not too sensibly, in court this week, " that if you don't repair a staircase a person's health is likely to be affected?" It depends, of course whether it collapses when he's at the top or the bottom.—*Topicist, S.F.P.*

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The reporters this week made much of the smartness of the appearance of the lady who got into trouble with the customs authorities. There is no local application in this, but a magistrate at home has just uttered the very sensible opinion that a girl should never be judged by the clothes she wears. Of course not, the evidence is too scanty.—*Topicist, S.F.P.*

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MERRILY WE LIE.

Leaving his native state of Perak for the first time in his life an old lawyer's clerk found himself in Johore. His thirst for knowledge was great and he ferretted out another of his own calling as being the best informant.

" Well, what is the State of Johore like, " asked the Perak Malay of the Johore Malay.

" Johore, my friend, is the most wonderful country in the East, unsurpassed for its beauty," began the Johore booster. " We have a regiment that would compare with the best, our Sultan is the richest and the strongest man in the East. He owns a hundred motor-cars and ....."

" And what does he do with so many cars," queried the Perak lawyer's clerk calmly.

" Oh, our Sultan jumps into a different car every five minutes and goes for a run," complacently replied the Johore man.

" In that case Johore will take a lot of beating," the Perak man replied. " Perak is also a fine state but there is nothing wonderful there. Our Sultan is an old kindly man and is much loved by the people, but he has one thing that is wonderful. He has a violin which is as tall as a coconut tree."

" Pray, tell me how your Sultan tunes and plays on such a mammoth violin, " asked the Johore man in amazement.

" Oh, that's simple," calmly replied the other. " Our Sultan has a long ladder and climbing this he tunes this violin."

" That's really wonderful. What is the tune he plays on such a violin," queried the Johore man incredulously.

" Lu Bohong Saya Bohong, Lu Bohong Saya Bohong," is the tune, replied the Perak man. (*You lie, I lie, You lie, I lie*).

PUBLICATION RECEIVED.

Carriage of Goods by Sea Ordinance 1927. (Ordinance No. 4 of 1927) By Richard Williamson of The Middle Temple and King's Inns, Barrister-at-Law and Dr. C. H. Withers-Payne, L.L.B. (Lond.), D.C.L. (Oxon), A Solicitor of the Supreme Court of Judicature, 1931. C. A. Ribeiro & Co., Ltd., 5, Raffles Place, Singapore. Price $5/-.